Filed 7/16/19 Ingram v. Six Flags Entertainment Corp. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KENNETH INGRAM et al., Plaintiffs and Appellants, v. SIX FLAGS ENTERTAINMENT CORP., Defendant and Respondent.	B281353 (Los Angeles County Super. Ct. No. PC052187)

APPEAL from a judgment of the Superior Court of Los Angeles County. Victor E. Chavez, Judge. Affirmed.

Stephen M. Johnson and Anthony Vieira for Plaintiffs and Appellants.

Amaro | Baldwin, Michael L. Amaro and Sanaz Cherazaie for Defendant and Respondent.

Kenneth Ingram, Rudy Vieane and Virline Vieane (collectively, Appellants) appeal from a judgment following a jury trial. Ingram and Vieane[1] were electricians employed by Intervener Magic Mountain LLC (Magic Mountain).[2] They were badly injured in an accident involving an "arc flash explosion" while working at the Magic Mountain theme park. An arc flash explosion occurs when an initiating electrical event (e.g., a short) produces a conductive gas in the air that has current flowing through it. It generates extremely high heat that can cause serious burns, as happened here.

Appellants sued Six Flags Entertainment Corp. (Six Flags), the corporate parent of Magic Mountain, for negligence on the ground that Six Flags assumed responsibility for providing the operative safety procedures and programs at the Magic Mountain theme park. Appellants argued that Six Flags failed to provide appropriate personal protective equipment (PPE) for the electrical work that Ingram and Vieane were doing when the accident occurred.

A unanimous jury returned a verdict in favor of Six Flags, finding that Six Flags was not negligent. Appellants appeal the judgment following the verdict (along with the trial court's denial of their motion for a new trial and motion for judgment notwithstanding the verdict) on two grounds. First, they argue

---

[1] Appellant Virline Vieane is Rudy Vieane's wife, who asserted her own claim for loss of consortium. We refer to Rudy Vieane as "Vieane."

[2] Magic Mountain intervened below on the basis of the workers' compensation benefits that it paid to Ingram and Vieane. It is not a party to this appeal.

that the trial court erred in excluding evidence of a safety program that Six Flags implemented after the accident specifying particular levels of PPE for work on the various park equipment. Second, they argue that the evidence was insufficient to support the jury's verdict finding no negligence by Six Flags.

We reject both arguments. The trial court did not abuse its discretion in excluding evidence of the subsequent safety program under Evidence Code section 1151, which makes evidence of a subsequent precautionary measure inadmissible "to prove negligence or culpable conduct."[3] Appellants argued that the evidence was relevant to show Six Flags' control over the Magic Mountain safety program, but Six Flags did not dispute that it exercised such control. And there was substantial evidence supporting Six Flags' defense that no PPE was necessary for Ingram and Vieane because the company policy was that they should not work on any energized electrical equipment. We therefore affirm the judgment.

BACKGROUND

1. The Accident[4]

Vieane worked as a maintenance electrician and Ingram as a ride electrician at the Magic Mountain amusement park. On January 5, 2010, they were tasked to perform work on the Roaring Rapids ride at the park. They were not given any PPE.

---

[3] Subsequent undesignated statutory references are to the Evidence Code.

[4] In light of the standard of review applicable to Appellants' sufficiency of the evidence argument, we summarize the trial evidence in the light most favorable to Six Flags as the prevailing party.

Vieane activated a disconnect switch that he thought de-energized all the equipment that he and Ingram were to check. During their work, Ingram asked Vieane to come over to assist with providing light for an area on which he was working. Ingram was attempting to loosen some screws on a cover. Ingram heard a small "hiss" and then there was an explosion. The explosion severely burned Vieane and Ingram on their faces and hands.

According to Six Flags' expert witness, Robert Armstrong, the accident occurred when Ingram was attempting to remove a cover over a circuit breaker. Ingram mistakenly believed that power to the area had been turned off. While trying to pry the cover off, Ingram apparently made contact between "one of the energized landing lugs of the circuit breaker and the grounded enclosure of the switchboard." The result was a current generated by 277 volts of electricity that vaporized metal on the screwdriver and caused an arc explosion. Armstrong testified to the various steps that Vieane and Ingram could have taken, but did not, to turn the power off and/or determine whether or not power was still flowing to the area before working on the circuit breaker.

2. The Six Flags' Safety Program

Six Flags' standard practice was that electrical workers should not work on energized equipment. When it is certain that equipment is not energized, workers need not wear PPE.

Nevertheless, by at least 2009 Six Flags had taken steps to develop a program to assess the arc flash risk on the different equipment at Magic Mountain and prescribe appropriate PPE for various tasks. The safety program was based in part on a "consensus" standard developed by the National Fire Protection Association (NFPA), named NFPA 70E.

The NFPA 70E standard addresses measures to deal with the risk of arc flash explosions.[5] The standard directs the use of PPE that is appropriate for the arc flash risk presented by various equipment. Determining the risk requires an assessment of each facility and department by a competent employee or consultant. As an alternative to such an assessment, an employer may simply determine the maximum exposure possible for the equipment in question and select the PPE that is appropriate for that maximum.

Six Flags retained a consultant, Cooper Bussmann, to assess the arc flash risk for the various locations and equipment at Magic Mountain, make recommendations for labeling the park's equipment, and conduct training. Cooper Bussmann issued its final report incorporating its analysis on February 22, 2010, less than two months after the accident that injured Vieane and Ingram (the Cooper Bussmann Final Report).

Following receipt of that report, Six Flags finalized and implemented its safety program. The program was described in a document titled, "Six Flags, Inc. Electrical Safety Program" (2011

---

[5] The federal Occupational Safety and Health Administration (OSHA) has not adopted NFPA 70E as a mandatory standard. Appellants' expert testified that compliance with NFPA 70E was nevertheless necessary under an OSHA "general duty" provision that requires employers to provide a safe work place, which may be determined by consensus standards such as NFPA 70E. Six Flags' expert testified that the safety programs that Magic Mountain had in place complied with all the OSHA requirements, and that those requirements in any event did not apply to Six Flags, as Six Flags was not the entity that employed Vieane and Ingram.

Electrical Safety Program), which contained, among other things, instructions on selecting appropriate PPE for particular work.

3. Proceedings Below

Prior to trial, Six Flags filed a motion in limine seeking to exclude evidence concerning post incident changes to the Magic Mountain safety program (the Post Incident Evidence). That evidence included (1) the 2011 Electrical Safety Program; (2) a 2011 Powerpoint presentation concerning the program; (3) safety manuals prepared after the incident; and (4) the Cooper Bussmann Final Report. Six Flags argued that this evidence concerned subsequent remedial measures and was therefore inadmissible under section 1151, and also that the evidence was irrelevant and likely to cause unfair prejudice. Appellants opposed the motion, arguing, among other things, that the evidence was relevant to show Six Flags' control over the Magic Mountain safety program and the feasibility of protective measures. The trial court granted the motion.

Appellants filed a motion for reconsideration. After the first day of trial, the trial court announced that it had reviewed the motion for reconsideration and had concluded that its initial ruling was incorrect. Several days later, just prior to testimony by Appellants' safety expert, Six Flags revisited the issue, arguing that the Post Incident Evidence was irrelevant and prejudicial because "there is no dispute about some element of control by Six Flags. The element is undisputed that Six Flags created some template manuals and provided those to the park and exercised some element of control." In response to this concession, the trial court asked Appellants' counsel, "without their contesting [control], what's your need?" Appellants responded that the Post Incident Evidence "shows . . . the type of

information that could and should have been provided years before but that wasn't."

After some additional argument, the trial court asked for and received Six Flags' commitment that it would "not . . . raise the issue of control at any point in [its] closing argument or with the variable witnesses." The court accepted counsel's representation that there would be no such argument or evidence, and on that basis ruled that Appellants were limited to pre-2010 evidence.

Following trial, the jury returned a unanimous special verdict finding that Six Flags was not negligent. The trial court entered judgment in favor of Six Flags on the verdict. Appellants filed a motion for a new trial and for judgment notwithstanding the verdict, arguing, among other things, that (1) the court improperly excluded the Post Incident Evidence; (2) the court failed to advise the jury that the issue of control was undisputed; and (3) the evidence was not sufficient to support the verdict. The trial court denied the motions.

DISCUSSION

1. The Trial Court Did Not Err in Excluding Evidence of a Safety Program Implemented After the Accident

We review the trial court's ruling excluding the Post Incident Evidence for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 197.) " 'In general, the trial court is vested with wide discretion in determining relevance and in weighing the prejudicial effect of proffered evidence against its probative value. Its rulings will not be overturned on appeal absent an abuse of that discretion.' " (*People v. Hardy* (2018) 5 Cal.5th 56, 87 (*Hardy*), quoting *People v. Edwards* (1991) 54 Cal.3d 787, 817.)

The trial court did not abuse its discretion in excluding the Post Incident Evidence. As both parties recognize, under section 1151 the evidence was not admissible to prove that Six Flags was negligent in failing to make PPE available to Ingram and Vieane. That section provides that "[w]hen, after the occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is inadmissible to prove negligence or culpable conduct in connection with the event." However, Appellants argue that, despite section 1151, the Post Incident Evidence was admissible to prove that (1) Six Flags assumed control over the Magic Mountain safety program and therefore owed a duty toward Ingram and Vieane; and (2) it was feasible for Six Flags to provide PPE to Ingram and Vieane that would have prevented or mitigated injuries from the accident.

We reject the argument. While these may have been permissible purposes for the evidence under section 1151 if the issues had been disputed, Six Flags did not dispute either its control over the Magic Mountain safety program or the feasibility of providing PPE. The trial court therefore acted within its discretion in concluding that the evidence was not necessary.

A. *The evidence was not necessary to prove control*

Appellants have not identified any evidence showing that Six Flags failed to meet its commitment to the trial court that it would not argue or introduce evidence disputing its control over the Magic Mountain safety program. Appellants claim that Six Flags "argued the issue of control in its final remarks on liability," but the portion of Six Flags' argument that Appellants cite did not deny that Six Flags controlled the safety program at Magic Mountain. Rather, it suggested that *because* Six Flags

exercised control, it should be treated as an employer for purposes of the workers' compensation law. This related directly to Six Flags' affirmative defense of workers' compensation exclusivity, which was given to the jury to decide.

At the conclusion of his argument on liability, Six Flags' counsel discussed the jury instruction concerning Six Flags' affirmative defense that the workers' compensation laws precluded Appellants' claims. He discussed Six Flags' obligation under that defense to prove, among other things, that Ingram and Vieane "were Six Flags employees" and that their injuries "essentially occurred in the course and scope of employment." He explained that Six Flags and Magic Mountain have a "parent-subsidiary relationship." He then summarized Appellants' own argument that Six Flags "exercised unrestricted control over the park safety as it relates to the Plaintiffs." He concluded by suggesting that this argument meant that Ingram and Vieane were Six Flags employees: "[T]he Plaintiffs are saying there was so much control exercised by the parent corporation over the subsidiary that they should be liable. He's saying that out of one side of his mouth, all this control, they should be liable. But then on the other side of his mouth he's saying, well, that control wasn't really that much for purposes of this parent-subsidiary relationship, and Six Flags shouldn't be entitled to those protections under the workers' compensation."

This argument did not ask the jury to reject Appellants' argument that Six Flags controlled the safety program at Magic Mountain. Rather, it suggested that Appellants' own argument concerning the extent of Six Flags' control over that program showed that Ingram and Vieane should be considered Six Flags employees. Whatever the merits of this argument, it fairly related to Six Flags' affirmative defense of workers' compensation

exclusivity and did not breach Six Flags' promise to the court that it would not dispute the issue of control.[6]

In the absence of any opposition to Appellants' evidence and argument that Six Flags controlled Magic Mountain's safety program, the trial court acted within its discretion in concluding that there was no need for the Post Incident Evidence. The cases that Appellants cite do not hold to the contrary.

In *Alcaraz v. Vece* (1997) 14 Cal.4th 1149 (*Alcaraz*), our Supreme Court held that section 1151 did not preclude admission of evidence that the defendants in that case constructed a fence surrounding an area containing an uncovered meter box where an accident had previously occurred. The court concluded that evidence concerning this subsequent remedial conduct was admissible to show that, although the city of Redwood City actually owned the particular strip of land containing the meter box, the defendants controlled the area and therefore owed a duty of care. (*Id.* at pp. 1166–1170.) The court noted that rule 407 of the Federal Rules of Evidence (28 U.S.C.) contains language that is "nearly identical to Evidence Code section 1151," with the additional language that " '[t]his rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, *if controverted*, or impeachment.' "

---

[6] Further undercutting Appellants' argument, Appellants did not object to Six Flags' argument and did not request any curative instruction. Thus, even if Six Flags' closing argument had been improper, Appellants forfeited the right to raise the issue on appeal. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 794–795.)

(*Alcaraz,* at p. 1169, italics added.) The court concluded that whether the defendants in that case "exercised control over the strip of land owned by the city on which the meter box was located is a '*disputed fact* that is of consequence to the determination of the action,' " and that the evidence of the defendants' control was therefore relevant. (*Id.* at p. 1167, quoting § 210, italics added.)

The court in *Alcaraz* discussed the Court of Appeal opinion in *Morehouse v. Taubman Co.* (1970) 5 Cal.App.3d 548 (*Taubman*), which Appellants also cite. (See *Alcaraz, supra,* 14 Cal.4th at pp. 1168–1169.) The court in *Alcaraz* explained that among the issues to be determined in *Taubman* was whether the general contractor defendant in that case had "retained control of the workplace so as to warrant imposition of liability on that contractor" for an accident involving an employee of a subcontractor. (*Alcaraz*, at p. 1169.) Evidence that the contractor's carpenters had installed handrails after the accident at the point where the accident occurred was therefore admissible " 'on the issue of control of the premises.' " (*Alcaraz,* at p. 1169, quoting *Taubman*, at p. 555, italics omitted.)

Thus, in both *Alcaraz* and *Taubman* the issue of control was disputed. Those cases are therefore consistent with the trial court's ruling here that the Post Incident Evidence was not admissible to prove Six Flags' control over the Magic Mountain safety program if that issue was *not* disputed.

If a fact is not in dispute, evidence offered to prove that fact is not relevant. (See *Hardy, supra,* 5 Cal.5th at p. 87 [evidence of a toxicology report was not admissible to explain why a victim would yell a racial slur where the prosecution never argued that the victim did *not* yell the slur].) In light of Six Flags' decision not to contest the issue of its control over the Magic Mountain

safety program, such control was not a "disputed fact that was of consequence to the determination of the action." (§ 210.) Evidence of subsequent remedial measures was therefore not relevant to that issue.

The trial court's finding that there was no need for the Post Incident Evidence to prove Six Flags' control over the Magic Mountain safety program is also supported by the evidence of control that Appellants *were* able to introduce. Appellants' experts testified that Six Flags controlled the Magic Mountain safety program. James Stanley, a former high-ranking OSHA compliance official, testified that Six Flags developed the relevant safety manuals, reviewed and updated them periodically, and directed compliance. Appellants also introduced manuals prepared by Six Flags containing directions for training and compliance. Stanley testified to his opinion that Six Flags' direction to Magic Mountain employees to participate in corporate safety committee meetings was an element of corporate control over safety programs at Magic Mountain. And he testified that Six Flags directed its parks to "follow the OSHA regulations."

Randy King, a former Six Flags corporate director of safety and risk management, also testified that "Six Flags Corporate" created the Magic Mountain safety reference manual and the "safety manager's standard operating procedure manual," and conducted an annual review. The manuals were for the purpose of ensuring that "the parks complied with the Six Flags corporate safety requirements." Six Flags also conducted an audit and formed safety committees. King offered the opinion that Six Flags was "very involved" in the Magic Mountain safety program, and therefore had the responsibility to ensure compliance.

Most important, Appellants introduced the draft Electrical Safety Program that Six Flags was in the process of creating in

2009 and that ultimately became the 2011 Electrical Safety Program that the trial court excluded from evidence. The draft contained sections on flash hazard analysis and the use of PPE that was very similar to the excluded final version. In particular, both the draft and the excluded 2011 Electrical Safety Program directed that "[w]here it has been determined that work will be performed within the Flash Protection Boundary, the proper Personal Protective Equipment shall be worn." Both the draft and the final 2011 Electrical Safety Program also stated that, prior to specified "lockout/tagout" steps, "the equipment is assumed to be not in a safe work condition; therefore, the proper Personal Protective Equipment must be worn and the associated boundaries must be enforced."

Appellants also introduced evidence concerning the contract between Six Flags and Cooper Bussmann for the arc flash analysis that Cooper Bussmann was retained to perform, along with invoices directed to Six Flags for that work. Appellants' expert opined that these documents showed that the "relationship was between Cooper Bussmann and Six Flags, Inc."

Thus, Appellants had adequate evidence of control without the Post Incident Evidence, further supporting the trial court's conclusion that such evidence was unnecessary.

B. *The Post Incident Evidence was not necessary to show the feasibility of PPE and would have undermined the purpose of section 1151 if admitted on that basis*

As with the issue of control, Six Flags did not dispute that it was feasible to provide Magic Mountain electrical workers with PPE. Appellants have not identified any evidence or argument by Six Flags contesting the feasibility of providing such equipment.

As discussed above, the Post Incident Evidence was not relevant to prove an issue that was not actually in dispute.

In any event, there was abundant evidence showing that it was feasible for Six Flags to provide PPE. As discussed above, Appellants introduced the 2009 draft Electrical Safety Program that referred to PPE requirements. In addition, Stanley testified that, based on internal Six Flags e-mails he reviewed from 2009, Six Flags had identified PPE as a capital expense for 2010 in the amount of about $360,000. And Stanley testified that the e-mails showed that Six Flags had the "ability and authority" to "fast track" implementation of arc flash assessment "if they desired."

There was no question that it would have been *feasible* for Six Flags to provide PPE; Six Flags' defense focused on whether it was *necessary* to do so. As with the issue of control, because there was no dispute of fact concerning the feasibility of providing PPE, there was no need to introduce Post Incident Evidence on that point.

Moreover, in light of the evidence in this case, admitting the Post Incident Evidence on the issue of feasibility would have simply invited the jury to consider the evidence for the impermissible purpose of determining whether Six Flags was negligent. Where a defendant does not deny that a particular remedial measure *could* have been taken, evidence and argument that the measure was feasible can easily be interpreted simply as evidence that the measure *should* have been taken sooner. That goes directly to the issue of breach of duty, i.e., negligence, which is an impermissible use of evidence concerning subsequent remedial measures under section 1151.

Appellants' argument for the admissibility of the Post Incident Evidence in this case illustrates the point. As discussed above, in response to the trial court's question why the Post

Incident Evidence was necessary, Appellants argued that it "shows . . . the type of information that could *and should* have been provided years before but that wasn't." (Italics added.) That is an argument concerning breach of duty, which section 1151 prohibits.

Appellants make similar arguments on appeal. Appellants argue that Six Flags' "final procedural implementation of the [2011] Electrical Safety Program should have been admitted into evidence to show how [Six Flags] delayed in finalizing a compliant arc flash safety program that was initially being evaluated in 2008." Appellants claim that the Post Incident Evidence "established that an arc flash hazard existed." They argue that the Cooper Bussmann Final Report would have shown that Six Flags "could have easily avoided the incident if they started the project one month earlier." And they assert that the report "shows the type of PPE that [Six Flags] should have purchased and provided to Appellants, which was a minimal cost to [Six Flags]." All of these arguments suggest that the Post Incident Evidence was relevant to the issue of Six Flags' negligence. The arguments therefore simply confirm that Appellants intended the evidence to be considered for an impermissible purpose.

C. *The trial court did not err in declining to inform the jury of a stipulation*

Appellants also argue that the trial court should have told the jury that Six Flags had stipulated to its control of the Magic Mountain safety program. The argument is not persuasive for several reasons.

First, there was *no* stipulation. Six Flags made its position clear to the trial court. It declined to stipulate to its control of Magic Mountain's safety program, but it also promised not to

argue or call any witnesses to the contrary. The trial court accepted that resolution "over the objection of counsel."

The trial court could not force Six Flags to agree to a formal stipulation. It might have required such a stipulation as a condition to exclude the Post Incident Evidence, but it acted within its discretion in declining to do so. As discussed above, if the factual issues for which the evidence was offered were not actually in dispute, the evidence was not relevant regardless of whether there was a formal stipulation establishing the facts.

Second, Appellants forfeited any argument that the trial court should have instructed the jury that the issue of control had already been decided. Appellants did not make such a request in the trial court.[7] Moreover, Appellants requested the instruction on "negligence by a parent corporation" that was given. While the

---

[7] Appellants cite a colloquy that occurred at the end of trial when the parties were discussing the verdict form. The parties had agreed to the first question on the verdict form, which asked simply, "Was Six Flags negligent?" A prior version of the form had apparently addressed the issue of control. One of Appellants' attorneys requested to read the first question on the prior version of the form "word-for-word so we can get the stipulation on the record." From the transcript, it appears that counsel was not requesting a jury instruction on the point, but was simply requesting the opportunity to put on the record that Six Flags did not contest the issue of control. In any event, after further discussion the attorney for Appellants who had been involved in the verdict form discussions confirmed that no further statement on the record was necessary, in "anticipation" that "there's not going to be any argument disputing the fact that Six Flags has control over the safety program." As discussed above, there was no such argument.

instruction did not specifically mention control, it did require the jury to find that "[i]n its preparation, distribution and oversight of the Park's Safety Program, Six Flags affirmatively acted to provide for the safety of the electrical workers at Magic Mountain." Appellants do not cite any subsequent objection or request that this instruction be revised or withdrawn in light of Six Flags' agreement that it would not contest the issue of control. Any error in submitting the issue of Six Flags' responsibility for the Magic Mountain safety program to the jury was therefore invited. (*Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1653 ["The doctrine of invited error bars an appellant from attacking a verdict that resulted from a jury instruction given at the appellant's request"].)

2. Substantial Evidence Supports the Verdict

In determining whether the evidence supports the jury's verdict, and therefore the judgment, we apply the substantial evidence standard of review. Under that standard, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor." (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.) Our task "*begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted," which will support the verdict. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) Substantial evidence is any evidence that is "reasonable in nature, credible, and of solid value." (*People v. Bassett* (1968) 69 Cal.2d 122, 138–139.) Testimony from a single witness may suffice. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

Appellants argue that no substantial evidence supports the verdict because Six Flags did not provide any evidence disputing

Appellants' expert testimony that it "failed to provide adequate PPE to Appellants on or before the date of the incident." This mischaracterizes the issue and ignores the defense that Six Flags offered at trial. The issue presented to the jury was not whether Six Flags provided "adequate PPE"; the issue was whether Six Flags was negligent. Six Flags offered abundant evidence that it was not *necessary* to provide PPE because the Magic Mountain workers were directed to work only on de-energized equipment.

This defense was supported by testimony by Six Flags' experts and by cross-examination of Appellants' experts. Six Flags' expert witness Robert Armstrong testified that it was "Magic Mountain's standard practice that their employees do not work on any energized electrical equipment." He offered his opinion that, as a result, PPE was not necessary. He also testified that the Magic Mountain workers received adequate training on how to shut the power off prior to beginning work.

Appellants' own expert, James Stanley, agreed on cross-examination that Magic Mountain had a strict policy that maintenance employees were never to work on live equipment. He agreed that Ingram and Vieane were required to show that they knew how to turn off the power for each ride before being certified. And he admitted that, if workers are "not working with live panels," they "don't need to wear personal protective equipment."

Six Flags also offered percipient testimony that Ingram and Vieane were adequately trained. A Six Flags employee testified about the training provided to Ingram and Vieane on the procedure for disconnecting power to the room in which they were injured. He also testified that on the morning of the incident, he reminded Ingram and Vieane that they should verify the power was turned off before working on the electrical panel.

Six Flags also obtained testimony supporting its defense from Vieane himself. On cross-examination, Vieane admitted that he was not supposed to work on live equipment, and that he was aware that PPE was not required for work on de-energized equipment.

This evidence was sufficient to support the jury's finding of no negligence. Based on this testimony, the jury could have reasonably found that Six Flags was not required to provide PPE to the Magic Mountain workers.

Appellants argue that PPE could have prevented the accident and that Six Flags therefore should have provided it. That was a reasonable argument at trial, but not on appeal. By focusing only on their own theory of the case rather than Six Flags' defense, Appellants have failed to meet their responsibility to "set forth, discuss, and analyze all the evidence . . . , both favorable and unfavorable." (*Doe v. Roman Catholic Archbishop of Cashel & Emily* (2009) 177 Cal.App.4th 209, 218.) We therefore could treat their substantial evidence argument as forfeited. (*Ibid.*) We decline to do so, but, as discussed above, we readily conclude that the jury's verdict was supported by substantial evidence.

DISPOSITION

The judgment is affirmed. Six Flags Entertainment Corp. is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.